

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

JAMES AND JEANINE COLEMAN )

Plaintiffs, )

v. )

LEADER BUILDERS CORP., )

Defendant. )

No. 07 L 452

Honorable Dennis J. Burke

**ORDER**

This matter having come before the Court on December 5, 2008; the Court having considered the briefs and oral arguments in connection with Defendant's Complaint to Modify, Set Aside, Vacate and/or Remit Award to Arbitrator; and Plaintiffs' Motion to Confirm Arbitration Award in Part and Vacate or Modify in Part; the Court hereby enters the following Order:

IT IS HEREBY ORDERED THAT:

1. Defendant's Complaint to Modify, Set Aside, Vacate and/or Remit Award to Arbitrator

Defendant's Complaint to Modify, Set Aside, Vacate and/or Remit Award to Arbitrator is DENIED. Section 12(a) of the Illinois Uniform Arbitration Act provides, in pertinent part:

"[u]pon application of a party, the court shall vacate an award where:

- (1) the award was procured by corruption, fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
- (3) the arbitrators exceeded their powers;..."

710 ILCS § 5/12(a) (2008). In general, judicial review of arbitration awards is quite limited and, whenever possible, a court must construe an award so as to uphold its validity. *Lemna v. Harry F. Shea & Co.*, 256 Ill. App. 3d 916, 920 (1st Dist. 1993), citing *Garver v. Ferguson*, 76 Ill. 2d 1 (1979). Because the parties have agreed to have their disputes settled by the arbitrator, the parties have agreed to accept, and the court will not overrule an award simply because its interpretation differs from that of the arbitrator. *Heatherly v. Rodman & Renshaw*, 287 Ill. App. 3d 372, 374 (1st Dist. 1997). To do

otherwise would substitute the judgment of the court for that of the decision maker chosen by the parties, and “would make an award the commencement, not the end, of litigation.” *Id.*, citing *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 395 (1991). Moreover, courts may clarify an award, but not alter it, if to do so would affect the merits of the controversy. *Lemna*, 256 Ill. App. 3d at 920. Section 12 of the Illinois Uniform Arbitration Act expressly authorizes five grounds for judicial vacation of an arbitration award, including that the arbitrator exceeded her powers. *Heatherly*, 287 Ill. App. 3d at 375, citing 710 ILCS § 5/12. In addition to those statutory bases, a court may vacate an award where it is in contravention of paramount considerations of public policy. *Id.* A mistake of law or fact will not serve as a basis to vacate an award, unless the error is gross and apparent on the face of the award. *Id.* An arbitrator exceeds her authority when she decides matters that were not submitted to her. *Id.*

After thoroughly considering the parties’ briefs and oral arguments, the Court finds that Defendant’s Complaint to Modify, Set Aside, Vacate and/or Remit Award to Arbitrator is DENIED. Illinois law unequivocally states that the Court is required to construe an award “so as to uphold its validity, if possible.” See *Lemna*, 256 Ill. App. 3d at 920. The Court finds no action by the arbitrator that invalidates the arbitration award. Specifically, Defendant has failed to bring to the Court’s attention any manor in which the arbitrator exceeded his authority in rendering the award. Rather, Defendant merely contests the arbitrator’s factual determinations. Moreover, the Court was not presented with any evidence showing that the arbitrator acted outside the scope of his authority by deciding matters that were not before him. Lastly, the arbitrator considered over one thousand pages of transcripts and evidence over three days in order to render the underlying award, and the Court has not been presented with any evidence indicating that the arbitrator exceeded his authority by deciding matters not submitted to him. Therefore, Defendant’s Complaint to Modify, Set Aside, Vacate and/or Remit Award to Arbitrator is DENIED.

2. Plaintiffs’ Motion to Confirm Arbitration Award in Part and Vacate or Modify Award in Part is GRANTED.

- a. Plaintiffs’ Motion to Confirm Arbitration Award in Part

Section 11 of the Illinois Uniform Arbitration Act provides:

“[u]pon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 12 and 13 [710 ILCS 5/12 and 710 ILCS 5/13].”

710 ILCS § 5/11 (2008). As discussed above, Defendant’s petition to vacate or modify the arbitrator’s award has been denied. Therefore, since Plaintiffs have petitioned the Court to partially confirm the arbitrator’s award, the Court shall confirm the award to the extent it grants \$91,524.83 plus \$5,600 in administrative expenses.

b. Plaintiffs' Motion to Vacate or Modify Award in Part

Plaintiffs' Motion to Vacate or Modify Award in part is GRANTED. Courts encourage settlement of disputes by arbitration and judicial review of arbitration awards is, accordingly, far more restricted than appellate review of a trial court's decision. *Spencer v. The Ryland Group, Inc.*, 372 Ill. App. 3d 200, 203 (1st Dist. 2007). Indeed, whenever possible, courts should construe an arbitration award in a manner that upholds its validity. *Id.* Even where an arbitrator commits gross errors of judgment in law or a gross mistake of fact, a court should not vacate an arbitration award unless the mistakes or errors are apparent on the face of the arbitration award. *Id.* However, an arbitrator does not have authority to ignore the plain language of the contract or to interpret unambiguous contract language. *Id.* The Act describes specific grounds on which a court can vacate an arbitration award. *Id.* Specifically, as relevant to this case, section 12(a)(3) provides that a court can vacate an arbitration award where "the arbitrators exceed their power." *Id.*

The Court first notes that both parties submitted a 1st District case on point. Plaintiffs submitted the case of *Spencer v. The Ryland Group, Inc.*, 372 Ill. App. 3d 200, 203 (1st Dist. 2007), and Defendant submitted the case of *Perkins Restaurants Operating Co. v. Van Den Bergh Foods Co.*, 276 Ill. App. 3d 305, 308 (1st Dist. 1995). The Court thoroughly considered both cases and determined that the *Spencer* case is factually similar to the case at bar, and explicitly distinguishes the *Perkins* case submitted by Defendant. After considering the case at bar in light of *Spencer*, Plaintiff's Motion to Vacate the arbitration award in part is GRANTED. Paragraph 11 of the Contract entitled "Dispute Resolution and Attorney Fees" provides:

"[t]he prevailing party in any legal proceeding related to this Agreement shall be entitled to payment of reasonable attorney's fees, costs, and expenses.

In the underlying arbitration proceeding, the Court finds that the arbitrator deemed Plaintiffs the "prevailing party." Specifically, the arbitrator's determination that Plaintiffs were a "prevailing party" is evidenced by the arbitrator's award of \$91,524.83. Moreover, the arbitrator explicitly determined that "administrative fees and expenses of the [AAA] totaling \$2,425.00 and the compensation and expenses of the arbitrator totaling \$9,950.00 shall be borne entirely by [Defendant]." Furthermore, the arbitrator ordered that "[Defendant] shall reimburse [Plaintiffs] the sum of \$5,600.00, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by [Plaintiffs]." The awarding of administrative fees and expenses was consistent with paragraph 11 of the Contract, which mandated that the prevailing party in any legal proceeding "shall be entitled to payment of reasonable attorney's fees, costs, and expenses." The Court further finds, in accordance with the *Spencer* case, that under the Contract, there was no basis whatsoever upon which to provide for the administrative fees and expenses without also providing for reasonable attorney's fees and costs. See *Spencer*, 372 Ill. App. 3d at 206. Despite the unambiguous language of the Contract, the arbitrator ignored the fact that the award of expenses traveled "in tandem, without any basis for differentiation" with attorney's fees and costs. See *id.* "If a party is deemed to be the prevailing party so as to meet the award of costs, he *ipso facto* is the prevailing

party for fees as well.” *Id.* Thus, the Court finds that the arbitrator’s award shows on its face that the arbitrator was not attempting to follow the Contract, but was simply “imposing his own compromise, without the semblance of contractual authorization.” See *id.* As a result, the Court finds that the arbitrator was acting outside the scope of his authority by awarding administrative expenses to Plaintiffs pursuant to the parties’ Contract, but refusing to award attorney’s fees and costs. Therefore, Plaintiffs’ Motion to Vacate the Award in Part pursuant to section 12(a)(3) of the IUAA is GRANTED to the extent that the arbitrator refused to award attorney’s fees and costs.

3. Finally, Defendant’s Motion for Rule 304(a) language is DENIED. The purpose of Rule 304(a) is to prevent piecemeal appeals involving fewer than all of the parties or claims, which are to be discouraged. *Matson v. Dept. of Human Rights*, 322 Ill. App. 3d 932, 938 (2d Dist. 2001). The Court finds that inclusion of Rule 304(a) language is inappropriate at this time. However, in order to expedite the issue of attorney’s fees and costs, the Court grants Plaintiffs leave to file a petition for attorney’s fees and costs with the Court.
4. This case is set for further status on January 21, 2009 at 9:45 a.m.

Entered:

**Judge Dennis J. Burke**

**DEC 05 2008**

**Circuit Court-1744**

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Judge Dennis J. Burke  
Circuit Court of Cook County, Illinois  
County Department, Law Division  
Commercial Calendar “N”